

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
ROBERT SANTIAGO	:	NO. 98-0128

MEMORANDUM AND ORDER

HUTTON, J.

April 30, 2001

Presently before this Court are Robert Santiago's Petition for Leave to Proceed in Forma Pauperis (Docket No. 61), Robert Santiago's Petition for Credit for Imprisonment While in Custody Prior to Sentence (Docket No. 60), and the Government's Response to the Petition for Credit for Imprisonment While in Custody Prior to Sentence (Docket No. 62).

I. INTRODUCTION

On February 19, 1998, the Petitioner, Robert Santiago, was arrested. The Petitioner remained in federal custody until February 27, 1998 when he was allowed bail. On March 24, 1998, the Petitioner was charged in a two count indictment with possessing cocaine with intent to distribute in violation of 21 U.S.C. § 841(a) and criminal forfeiture in violation of 21 U.S.C. § 851. On April 3, 1998, the Petitioner was sentenced to two and a half to five years in state prison for violation of probation. On June 11, 1998, the Court ordered the Petitioner produced in federal court from his state custody for the purposes of trial. On June 29,

1998, the Petitioner changed his plea to a plea of guilty thereby averting trial. Thereafter, on June 29, 1998, the Court ordered the Petitioner returned to state custody.

A sentencing hearing was held on February 16, 1999. At that hearing, the Court sentenced the Petitioner to the mandatory minimum term of 120 months to run concurrently to the state court sentence being served by the Petitioner, an 8 year term of supervised release upon release from imprisonment, a fine of \$500, and a special assessment of \$100. The Petitioner's sentence was subsequently affirmed on appeal to the United States Court of Appeals for the Third Circuit. The Petitioner now motions for a credit for his pre-sentencing imprisonment. In addition, the Petitioner has filed a petition for leave to proceed in forma pauperis.

II. DISCUSSION

A. Petition for Leave to Proceed In Forma Pauperis.

The federal in forma pauperis statute is designed to provide access to the federal courts to indigent litigants. See Neitzke, et. al. v. Williams, 490 U.S. 319, 324 (1989); see also 28 U.S.C.A. § 1915(a) (West Supp. 2000). Once an indigent litigant provides an affidavit containing the proscribed information, the Court "may authorize the commencement, prosecution or defense of any suit, . . . without prepayment of fees." § 1915(a). In support of his petition for leave to proceed in forma pauperis, the Petitioner has

submitted an affidavit stating that he has no stocks or bonds, checking or savings accounts, no property or real estate, and no other valuable property. It appears from his affidavit that the Petitioner does not have the funds necessary to pay the fees associated with pursuing this action. As a result, leave to proceed in forma pauperis is granted.

B. Petition for Credit for Imprisonment While in Custody Prior to Sentencing.

At the outset it is crucial to distinguish the exact nature of the Petitioner's claim. The Petitioner is not contesting the validity of the 120 month sentence imposed pursuant to his guilty plea, he is arguing that the time he was incarcerated in state prison from the date of his guilty plea until the date of sentencing should be credited to his sentence thereby resulting in an earlier release date. See generally Chambers v. Holland, 920 F.Supp. 618, 621 (M.D.Pa. 1996) In support of this contention, the Petitioner states that the sentencing judge indicated an intent to credit that time. However, it is not the sentencing court which determines if credits should be granted, it is the Bureau of Prisons (BOP). See United States v. Wilson, 503 U.S. 329, 333-35, 112 S.Ct. 1351, 1353-54 (1992); see also Edwards v. United States, 41 F.3d 154, 155 (3d Cir. 1994). The proper vehicle for challenging the computation of credits by the BOP is through a petition for a writ of habeas corpus pursuant to 28 U.S.C.A. § 2241 (West Supp. 2000). See Barden v. Keohane, 921 F.2d 476, 478 (3d

Cir. 1991); see also United States v. Smith, 101 F.Supp.2d 332, 338 (W.D.Pa. 2000).

At this time, the Petitioner's motion is premature. The Petitioner remains in state custody until the state releases him to the federal authorities. See Chambers, 920 F.Supp. at 622. Once the Attorney General receives the Petitioner into federal custody, the BOP determines when the sentence commences for purposes of calculating the completion date, and what credits are due for time already spent in prison. See id. at 620-21. While the Attorney General or the BOP may designate the state facility for service of the federal sentence, there is no indication that such a designation has been made in this case. See id. at 621-22. Therefore, it does not appear that the Petitioner is in federal custody or that the BOP has had an opportunity to make the sentencing calculations that the Petitioner is requesting. As a result, this Court must deny Plaintiff's motion with leave to renew once sentencing credit determinations have been made by the BOP or the Petitioner provides documentation that his requested credits have not been granted.

For the foregoing reasons, Robert Santiago's petition for leave to proceed in forma pauperis will be granted and his petition for credit for imprisonment while in custody prior to sentence will be denied with leave to renew.

An appropriate Order follows.

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v.	:	
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O R D E R

AND NOW, this 30th day of April, 2001, upon consideration of Robert Santiago's Petition for Leave to Proceed in Forma Pauperis (Docket No. 61), Robert Santiago's Petition for Credit for Imprisonment While in Custody Prior to Sentence (Docket No. 60), and the Government's Response to the Petition for Credit for Imprisonment While in Custody Prior to Sentence (Docket No. 62)), IT IS HEREBY ORDERED that the Petition for Leave to Proceed in Forma Pauperis is **GRANTED**; and

IT IS HEREBY FURTHER ORDERED that the Petition for Credit for Imprisonment While in Custody Prior to Sentence is **DENIED WITH LEAVE TO RENEW**.

BY THE COURT:

HERBERT J. HUTTON, J.